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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 911

HYLAS N. HASTINGS, *Petitioner*

v.

CARL D. MANN, t/a Mann's Harbor Marina, Mann's Harbor, North Carolina, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENT, CARL D. MANN, IN OPPOSITION

GERALD F. WHITE
324 Carolina Building
Elizabeth City, North Carolina
Proctor for Respondent

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OPINIONS BELOW

The opinion of the District Court below is reported in 226 F. Supp. 962. The opinion of the U. S. Court of Appeals for the Fourth Circuit is not yet reported. This opinion is printed in the appendix to the petition, beginning on page 1c.

JURISDICTION

The judgment of the United States Court of Appeals was entered in this cause on January 11, 1965. The petitioner relies upon the provisions of Title 28, USC Section 1254(1) to invoke the jurisdiction of this Court.

STATEMENT

The respondent, Carl D. Mann, calls special attention to Sections 2 and 4 of the Amended Libel, which Sections are the crucial parts thereof, insofar as the petition for writ of certiorari is applicable, and said Sections, appearing of record, read as follows:

> "2. *That the occurrences mentioned hereinafter occurred on a boat ramp* situated in Pamlico Sound at Mann's Harbor, North Carolina, while the libellant was attempting to launch a small outboard motor boat on or about April 9, 1963; said boat ramp being owned and operated at the time aforementioned by the respondent, Carl D. Mann. (Emphasis added)
>
> "4. That on or about April 19, 1963, the libellant herein paid to the respondent or his duly authorized agent the sum of One Dollar ($1.00) in consideration for using the respondent's small boat ramp for the purpose of launching the libellant's small outboard motor boat; that while launching said small outboard motor boat *and while on respondent's boat ramp,* and while standing in the navigable waters of Pamlico Sound, due to the slippery and unsafe condition of respondent's boat ramp and due to the negligence and wrongdoing on the part of the respondent, its agents and employees, the libellant was caused to fall and sustain serious injuries which are permanent in nature." (Emphasis added)

The following stipulations, appearing of record, were entered into by Libellant and Respondent and adopted as facts by the District Court in its opinion filed on March 6, 1964:

> "1. *The ramp is constructed of creosoted lumber lying on the ground on the respondent's property,* and extends to and beyond the shore line into the water along the bottom approximately seven to eight feet depending upon the tide, the extreme end of the ramp under the water being about four feet below the surface of the water depending upon the tide. (Emphasis added)
>
> 2. The ramp is flush and level with the ground attached to sills buried into the ground.
>
> 3. The ramp does not float with the tide but is bolted and attached to the ground with stobs and creosote posts.
>
> 4. The ramp is used to accommodate boat trailers which are backed onto the ramp by automobiles or trucks.
>
> 5. Attached hereto is a photograph of the ramp."

On November 8, 1963, the respondent filed an exception to the libel and a motion to dismiss on the grounds that the United States District Court sitting in Admiralty did not have jurisdiction over the subject matter of the libel as set forth in the foregoing allegations and related stipulations. On March 6, 1964, the District Court filed its memorandum opinion, and on March 19, 1964, the District Court entered its final decree dismissing the libel. On appeal by the libellant to the United States Court of Appeals for the Fourth Circuit, the judgment of the District Court dismissing the libel was affirmed by said Appellate Court below.

QUESTION PRESENTED

Should the petition for writ of certiorari be denied in that there are no special and important reasons to allow the same and upon the holding of the United States Court of Appeals for the Fourth Circuit, predicated upon alleged and stipulated facts, that the District Court properly concluded that the boat ramp was firmly affixed to the land, is an extension of the land, and the libellant's injury is not cognizable in Admiralty?

ARGUMENT AND REASONS WHY THE PETITION FOR THE WRIT SHOULD BE DENIED.

The considerations governing review on certiorari, as set forth in Rule 19 of the Supreme Court Rules, do not, we submit, suggest any reason for granting the writ which is applicable in this case. We can find no special and important reasons calling for the exercise of sound judicial discretion so as to allow the writ. We will endeavor to substantiate our contention that the decision rendered by the United States Court of Appeals for the Fourth Circuit is in no manner in conflict with the decision of another Court of Appeals on the same matter, and that no important question of Federal law should be settled by this Court in this case, and that no Federal question has been decided which in any way conflicts with applicable decision of this Court, but, to the contrary, existing and applicable decisions of the Supreme Court of the United States give approval and sanction to the law and holding as laid down by the said Appellate Court below.

It seems to us that the petitioner has either overlooked or ignored the well-established doctrine or rule of land extensions as this concept has been repeatedly

and uniformly applied in holdings of the Circuit Courts and the Supreme Court of the United States. Chief Judge Haynsworth in his opinion in this case for the Appellate Court below makes the following significant and accurate statements:

> "In The Plymouth, the fire-damaged pier was treated as land. Since then, it has been uniformly held that piers, docks, wharfs and similar structures extending over navigable waters are extensions of land, though their use and purpose be maritime. Damage to such structures and personal injuries suffered by persons while upon such structures are not compensable in Admiralty, unless, under the 1948 Act, caused by a vessel on navigable waters."

We submit that the accuracy of the foregoing statements quoted from the opinion of Chief Judge Haynsworth, and their applicability to this case and factual situation cannot be effectively called into question. In the case of *Cleveland Terminal and Valley R.R. Co.* v. *Cleveland Steamship Co.*, 208 U.S. 316, 52 L. Ed. 508, 28 S. Ct. 414, the holding therein clearly enunciates the principle that land and extensions of land are one and the same when it comes to deciding Admiralty jurisdiction. In that case the following pertinent language appears:

> "But the bridges, shore docks, protection piling, piers, etc., pertain to the land. They were structures connected with the shore and immediately concerned commerce upon land. None of these structures were aids to navigation in the maritime sense, but extensions of the shore and aids to commerce on land as such."

The case of *T. Smith & Son, Inc.* v. *Taylor*, 276 U.S. 179, 48 S. Ct. 228, was an action for the death of a long-

shoreman working on a stage resting solely on a wharf, resulting when he was struck by a sling from a vessel and knocked into the navigable waters. In affirming the Court of Appeals decreeing that the case was not within Admiralty and Maritime jurisdiction, the Supreme Court of the United States said:

> "Plaintiff in error concedes that the stage and wharf on which deceased was working are to be deemed an extension of the land (Cleveland Terminal R.R. v. Steamship Co., 208 U.S. 316, 321, 28 S. Ct. 414, 52 L. Ed. 508, 13 Ann. Cas. 1215; Industrial Comm. v. Nordenholt Co., 259 U.S. 263, 275, 42 S. Ct. 473, 66 L. Ed. 933, 25 A.L.R. 1013), and that the state law would apply if he had been injured or killed by falling on the landing place. It argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction. But this is a partial view that cannot be sustained. The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death. The G. R. Booth, 171 U.S. 450, 460, 19 S. Ct. 9, 43 L. Ed. 234. The substance and consummation of the occurrence which gave rise to the cause of action took place on land. The Plymouth, supra. This case cannot be distinguished from Johnson v. Chicago Elevator Co., 119 U.S. 388, 397, 7 S. Ct. 254, 30 L. Ed. 447, or Martin v. West, 222 U.S. 191, 196, 32 S. Ct. 42, 56 L. Ed. 159, 36 L.R.A. (N. S.) 592). The contention of plaintiff in error is without merit."

In a leading treatise on Admiralty, to wit, Benedict, on Admiralty, Vol. 1, Chapt. XV, Section 128A, page 354, the following statement of law appears with abun-

dant foot-noted authorities, including decisions of the Supreme Court of the United States:

> "Actions for tort resulting in personal injuries on land, as on a pier, or for damage to a bridge or to a pier, these being extensions of the land, . . . are not within the jurisdiction."

And in 2 C. J. S. Admiralty, Section 59, page 116:

> "A Court of Admiralty is without jurisdiction where the place of injury was on land, for example, on a wharf or dock, or in a tunnel under the water."

The petitioner cites *Weinstein* v. *Eastern Airlines, Inc.*, 316 F.(2d) 758 (1963), cert. denied 375 U.S. 940, 11 L. Ed. 2d 271, 84 S. Ct. 343, and *Interlake Steamship Co.* v. *Neilsen*, 338 F. 2d 879. These two cases do not involve the extension of land rule. In the *Weinstein case* the facts disclose that an aircraft crashed at sea. The Court of Appeals for the Third Circuit compared the aircraft crash into navigable waters to the dangers to persons and property arising out of the sinking of a ship or a collision between two vessels. In the *Interlake Steamship Company case* the facts disclose that the injury occurred in the navigable waters of Lake Erie, and no land extension such as a boat ramp or a dock or a pier caused the injury. We submit these two cases, having nothing whatever to do with the land extension doctrine, are not controlling nor applicable. In both of those cases the injury occurred on navigable waters. In the case now under consideration the alleged injury occurred on a land extension.

In his printed petition at page 5 the petitioner makes the mistaken assertion that "the Court below has limited the locality doctrine to torts occurring on vessels

on navigable waters." In making this statement, the petition then quoted the following statement from the opinion of the Court below entirely out of context:

> "The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters."

In refuting the interpretation and conclusion which the petitioner has chosen to derive from the foregoing quotation, we quote herein the more comprehensive statement of the Court below in context as the same appears on pages 2c and 3c of the Appendix to the printed petition of petitioner:

> "Traditionally, Admiralty's jurisdiction to grant redress for maritime wrongs was limited to those in which the harmful effect of the wrong was suffered at sea. It was thus held in The Plymouth, 70 U.S. (3 Wall.) 20, that there was no jurisdiction in Admiralty to award damages against a vessel for loss caused by a fire which had spread to a pier and its associated warehouses from the vessel. Since the tort was consummated upon land and the injury suffered there, the tort was regarded as local in nature and not cognizable in Admiralty.
>
> The rule of The Plymouth has been modified, of course, by the Admiralty Jurisdiction Extension Act of 1948. That statute gives Admiralty jurisdiction of such torts when caused by a vessel on navigable waters. The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters."

From the foregoing quotation in proper context it is quite obvious that the Court below has not limited Admiralty jursidiction to torts occurring on vessels

on navigable waters. The Court below simply correctly stated the holding in *The Plymouth* that the pier, being fire damaged by a vessel, was treated as land; thus, there was no jurisdiction in Admiralty. Then the Court below explained that the holding of *The Plymouth* has been modified by Congressional enactment so that if such a tort is caused by a vessel on navigable waters, then there is jurisdiction in Admiralty, the Court pointing out that the holding and rule of *The Plymouth* is still applicable to limit Admiralty's jurisdiction when the instrumentality which caused the wrong to the land or land extension was not a vessel on navigable waters. This explanation by the Court below follows and fits in with its statement in its opinion on page 2c of petitioner's Appendix that "It (boat ramp) was an extension of land, and there is no jurisdiction in Admiralty to award damages for injuries suffered upon it, unless caused by a vessel".

The case of *Netherlands American Steam Navigation Co.* v. *Gallagher* (Second Circuit), 282 Fed. Rep. 171, presented the question involving the jurisdiction of the Courts of the United States in a suit for injury to a stevedore, while working on a pier. In holding that the United States District Court was without jurisdiction of the claim, and making particular reference to the Supreme Court decision in *The Rock Island Bridge Case*, the Court of Appeals for the Second Circuit said at page 176 of its opinion:

> "The injury to the plaintiff happened on the wharf, in other words, upon the land; for it is clearly established that wharves and bridges, *being fixed* and immovable, are a part of the land to which they are attached, whether they project over the water or not. Injuries done upon them are not maritime torts; consequently they are not

> within the Admiralty jurisdiction, because not done upon the sea. The Rock Island Bridge, 6 Wall. 213, 18 L. ed. 753; the Neil Cochran, 1 Brown's Adm. 162 Fed. Cas. No. 7,996; The Ottawa, Brown's Adm. 35€, Fed, Cas. No. 10,616. In the Rock Island Bridge Case the court held that, though bridges and wharves may aid commerce by facilitating intercourse on land, or the discharge of cargoes, they constitute no part of the high seas or navigable waters, and no maritime lein can arise with reference to them, as in the case of vessels, steamers, and rafts, and upon goods and merchandise thereon." (Emphasis added)

There is no material distinction between a pier and a ramp. Suppose at high tide navigable waters should slightly wash over the surface of a low built pier, and a person standing on the pier with his feet awash were to slip and injure his knee. Could it be said that a Court sitting in Admiralty would have jurisdiction simply because the injured person's feet were awash while he was standing on the surface of the pier—a land extension. It seems to us the answer to this analogous question is in the negative. Certainly, the same reasoning should apply to the ramp, "lying on the ground on the respondent's property" (See stipulation quoted herein in STATEMENT), and being fixed and immovable, for as Chief Judge Haynsworth said in the opinion for the Court below, appearing on page 6c of petitioner's Appendix:

> "If his feet are awash, he is still standing upon an extension of the land in the same sense as is a worker upon a pier, who, when injured, is well seaward of both high and low water."

To reason otherwise would create the anomalous situation of conferring Admiralty jurisdiction today and

taking it away tomorrow, depending upon the viscissitudes of the winds and tides at a given moment.

CONCLUSION

We conclude where we began. There is no special and important reason for a review in this case on writ of certiorari. Rule 19, Supreme Court Rules. The limits of the jurisdiction of Admiralty Courts applicable to this case have been properly and precisely defined by the Court below in harmony with pertinent decision of other Circuit Courts and under the law laid down by the Supreme Court of the United States. A review on writ of certiorari is not had merely to reaffirm ancient land marks in the law. It seems to us that the real effect of the petitioner's application for review on certiorari is to call in question and ask this Court to reconsider and overrule its holdings in *The Plymouth* and related decisions which have enunciated the principle that injuries occurring on land extentions--piers, docks, wharves and similar structures such as ramps—in the absence of a valid Congressional enactment, are not compensable in Admiralty. We respectfully ask this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

GERALD F. WHITE
Gerald F. White
324 Carolina Building
Elizabeth City, North Carolina
Proctor for Respondent
Carl D. Mann